IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 660 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMTUBHAI NANAJIBHAI THAKOR - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MRS SHILPA R SHAH for the appellant.
MRS FALGUNI PATEL, APP, for the respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried by Sessions Court, Nadiad, in Sessions Case No.269 of 1999 for the offence of murder of Maganbhai Devjibhai Thakore, allegedly, committed by the appellant on 30th May, 1999, around 5.30 to 6.00 P.M. in the outskirts of village Vasana of Borsad Taluka of Kheda District (as it then was). The appellant came to be convicted for the said offence and sentenced to imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months. He was also given benefit of set off and, hence, this appeal.

2. The prosecution case, in brief, is that on 30th May, 1999, Mafatbhai Devjibhai Thakore, brother of the deceased was informed by Kalidas Babubhai Thakore that deceased Maganbhai has been done to death by Ramtubhai Nanjibhai Thakore. Mafatbhai, therefore, immediately left on his bicycle along with his cousin Govind Mangalbhai Thakore and Rajubhai Ranchhodbhai Thakore and found dead body of his brother lying in the field

opposite to the house of Ramabhai Dahyabhai Thakore with the skull open. They, therefore, inquired from the residents of the neighbouring house and were told that while they were listening Kadha, they heard some sound outside and, therefore, they went out and found that accused-Ramtubhai Nanjibhai Thakore was hitting Maganbhai Devjibhai with a wooden log of babul tree. Mafatbhai, therefore, went to Virsad Police Station and lodged a First Information Report. Offence was registered and investigated and, ultimately, charge sheet was filed in the Court of learned Judicial Magistrate, First Class, Borsad. The learned J. M. F. C. committed the case to the Court of Sessions and the case came to be registered as Sessions Case No.269 of 1999. Charge was framed against the accused at Exhibit 5, to which he pleased not guilty and claimed to be tried. The accused came to be tried and convicted by the Trial Court, as stated above, and, hence, this appeal.

3. We have heard learned Advocate, Ms. Shilpa Shah, for the appellant and learned Additional Public Prosecutor, Mrs. Patel, for the respondent-State.

4. Learned Advocate, Ms. Shah, submitted that there are three persons, who claim to be eye-witnesses to the incident, but their depositions are inconsistent. However, it emerges from their evidence that there was a standing crop of Bajara between the house where the witnesses were and the place of alleged incident. There was also a hedge falling in between and, therefore, they could not have seen the incident. Ms. Shah contended further that there is no evidence on motive aspect. It is also contended that the Arrest Panchnama of the accused indicates that he had injuries on his person and, therefore, a fight or scuffle may be inferred between the appellant and the deceased. There is no evidence about any premeditation and, therefore, benefit may be given to the accused-appellant by altering conviction from one under Section 302 of I. P. C. to one under Section 304 of I. P. C. She submitted that the appeal may, therefore, be allowed.

5. Learned Additional Public Prosecutor, Mrs. Patel, has opposed this appeal. According to her, the evidence of eye-witnesses is consistent. The incident has occurred in broad day light. The eye-witnesses are independent witnesses, who have no axe to grind against the appellant or have no reason to unduly

favour the victim. Mrs. Patel submitted that when there is direct evidence of eye-witnesses, there is no need for any evidence on motive. She also submitted that the injuries on person of the accused need to be explained by the accused whereas the accused has taken a plea of total denial of involvement. Under the circumstances, she submitted that the appeal may be dismissed.

6. We have considered rival side submissions and have examined the record and proceedings of the case in light of their contentions.

7. The prosecution has examined Dr. Jignesh Jayantilal Patel at Exhibit 26. He is the doctor who performed the postmortem. He noticed as many as six external injuries and five internal injuries. The doctor has opined that the injuries were sufficient in ordinary course of nature to cause death and were possible by the muddamal-log. The cause of death was shock due to the head injuries. Apart from other injuries, injury No.1 has been described by the doctor as CLW of the size of 12" x 10" x forceps deep on frontal, temporal, parietal and occipital parts of the right side of the skull extending to the left side also with the brain

substance protruding. There were CLWs, one on right eye extending to right ear; one one right side of the face; and one one right jaw. There were abrasions on palmar aspect of left hand and left heel. The doctor has opined that at least seven to eight blows would be required with muddamal article No.3-wooden log to cause these injuries.

7.1 This medical evidence is sufficient to conclude that the death of deceased-Maganbhai Devjibhai was homicidal.

8. The prosecution has examined Rameshbhai Dahyabhai (Exhibit 11), Ramabhai Dahyabhai (Exhibit 16) and Harmanbhai Nanjibhai (Exhibit 17) as eye-witnesses. They were all attending Sathyanarayan Kadha in the house of Harmanbhai Nanjibhai (Exhibit 17). The said house is located near the place of incident. The depositions of these three witnesses are consistent on the aspect that they heard a thud noice and feeling that somebody was being beaten, they rushed out of the house and found the appellant hitting the deceased. They, therefore, shouted at him not to do so and rushed towards him. But the appellant continued hitting the deceased and then left the place leaving behind the wooden log

with which he was hitting the deceased. They all knew the accused before hand. The incident has occurred around 5.30 in the evening on 30th May, 1999, that is in broad day light and, as such, there is no scope for any mistaken identity. The witnesses have been tested on touch stone of cross-examination, but they have remained unshaken and unbaffled. There emerges nothing during their cross-examination which would help the accused. They all have identified the accused at the place by name and they have also identified the accused in the Court. There is no reason to disbelieve these independent witnesses particularly when P.W.4 has stated that he has family relations with the appellant. He will certainly have no reason to tell a falsehood before the Court.

9. The first informant is younger brother of the deceased. He is examined as P. W. 1. He also received the information immediately after the incident to the effect that the appellant had murdered his brother. He rushed to the place of incident and gathered information from these very eye-witnesses staying in that house, which implicated the appellant. He, therefore, lodged the F. I. R.

10. In light of the evidence of the eye-witnesses, absence of evidence on motive would pale into insignificance.

11. It is true that when the appellant was arrested, he was found to have injuries on his knees, forehead and palm-back. There was swelling on the wrist, but these injuries do not lead the Court any way. The appellant has not come with any plea or explanation as to how he sustained these injuries and, as such, existence of injury on person of the accused will be of no consequence.

12. We are conscious of a discrepancy in the evidence of eye-witnesses regarding the exact distance between the house where the witnesses were and the place of incident. But that difference is not so significant as would affect their version considering the fact that the incident has occurred in broad day light and the fact that the accused was known to them previously.

13. In view of the fact that there is consistent evidence of eye-witnesses, we are of the view that the Trial Court was justified in convicting the appellant for the offence of murder. The appeal,

therefore, must fail and is dismissed. Judgment and order of conviction and sentence rendered by the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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